

D-2

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Assign Grant of Easement No. S-4206, Sun Sun Lau, Ltd., Assignor,
to 1055 Kinoole, LLC, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key:
(3) 2-2-20:16.

APPLICANT:

Sun Sun Lau, Ltd., a Hawaii corporation, as Assignor, to 1055 Kinoole, LLC, a Hawaii
limited liability company, as Assignee.

LEGAL REFERENCE:

Sections 171-13 and 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Waiakea, South Hilo, Hawaii,
identified by Tax Map Key: (3) 2-2-20:16, as shown on the attached map labeled Exhibit
A.

AREA:

2,562 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

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CHARACTER OF USE:

Underground sewer line purposes.

TERM OF LEASE:

65 years, commencing on September 26, 1968 and expiring on September 25, 2033. Last rental reopening occurred on September 26, 2003; next rental reopening is scheduled for September 26, 2013.

ANNUAL RENTAL:

\$156.

CONSIDERATION:

According to public records, 1055 Kinooole, LLC acquired the parcel served by the sewer easement, TMK (3) 2-2-20:14, for \$1,200,000 in 2007. No separate consideration is being paid for the assignment of the sewer easement rights covered by Grant of Easement No. S-4206.

RECOMMENDED PREMIUM:

Not applicable as the grant of easement does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

At its meeting of April 14, 1967, Item F-10, as amended by action taken at its meeting of June 16, 1967, Item F-2, the Board of Land and Natural Resources approved the sale of a lease at public auction for the subject sewer easement across State land. The proponent of this action and the successful bidder at auction was Applicant/Assignor Sun Sun Lau, Ltd. (Sun Sun Lau). Sun Sun Lau needed the easement to tie a proposed restaurant on its

land designated as TMK (3) 2-2-20:14 (Parcel 14) into the County sewer system. Grant of Easement No. S-4206 covering the sewer line was executed as of September 26, 1968.

For several decades thereafter, Sun Sun Lau operated a restaurant on Parcel 14. The file indicates that the restaurant shut down in June 1997. Sun Sun Lau later sold the property and the purchaser demolished the old restaurant structure and erected a modern office building on the site. Applicant/Assignee 1055 Kinoole, LLC (1055 Kinoole) acquired Parcel 14 in 2007 pursuant to a deed recorded with the Bureau of Conveyances as Document No. 2007-015611. Counsel for 1055 Kinoole advises that 1055 Kinoole presently leases the first floor of the building on Parcel 14 to the County of Hawaii for its Office of Aging. The second floor of the building is leased to State Department of Human Services.

Grant of Easement No. S-4206 is an older term easement instrument that requires the Board's approval prior to assignment. There were at least two mesne conveyances between Sun Sun Lau's ownership of the property benefited by the easement (Parcel 14) and its acquisition by 1055 Kinoole. However, 1055 Kinoole is the first owner after Sun Sun Lau to request the assignment of Grant of Easement No. S-4206.

Sun Sun Lau is presently in compliance with all lease terms and conditions with the exception of liability insurance coverage. Land Division sent a notice of default for failure to maintain liability insurance to Sun Sun Lau on January 30, 2009, which Sun Sun Lau received on February 2, 2009. The default was not cured within the 60 days allowed. Staff has had a number of telephone conversations, meetings and other communications with Sun Sun Lau representatives and its counsel to address the insurance default. 1055 Kinoole submitted a liability insurance certificate purportedly covering the easement, but because 1055 Kinoole is not the State's grantee, staff could not accept the certificate. By letter dated November 17, 2009, Sun Sun Lau's attorney explained that since Sun Sun Lau no longer owns the land serviced by the easement (Parcel 14), it may not have an insurable interest sufficient to secure the required liability insurance. See Exhibit B attached.

Despite the outstanding liability insurance default, staff is recommending approval of the assignment request because the assignee, 1055 Kinoole, is prepared to submit the necessary proof of insurance and otherwise comply with the lease terms. Approving the assignment will resolve the issues regarding the ownership of and responsibility for the easement as between Sun Sun Lau and 1055 Kinoole. Additionally, 1055 Kinoole's counsel has advised staff that a pending loan using Parcel 14 as security could be jeopardized if the assignment is not approved as requested.

Assignee 1055 Kinoole has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The next rental reopening is scheduled for September 26, 2013. There are no outstanding rental reopening issues.

RECOMMENDATION:

That the Board:

1. Consent to the assignment of Grant of Easement No. S-4206 from Sun Sun Lau, Ltd., Assignor, to 1055 Kinoole, LLC, as Assignee, subject to the following:
 - A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



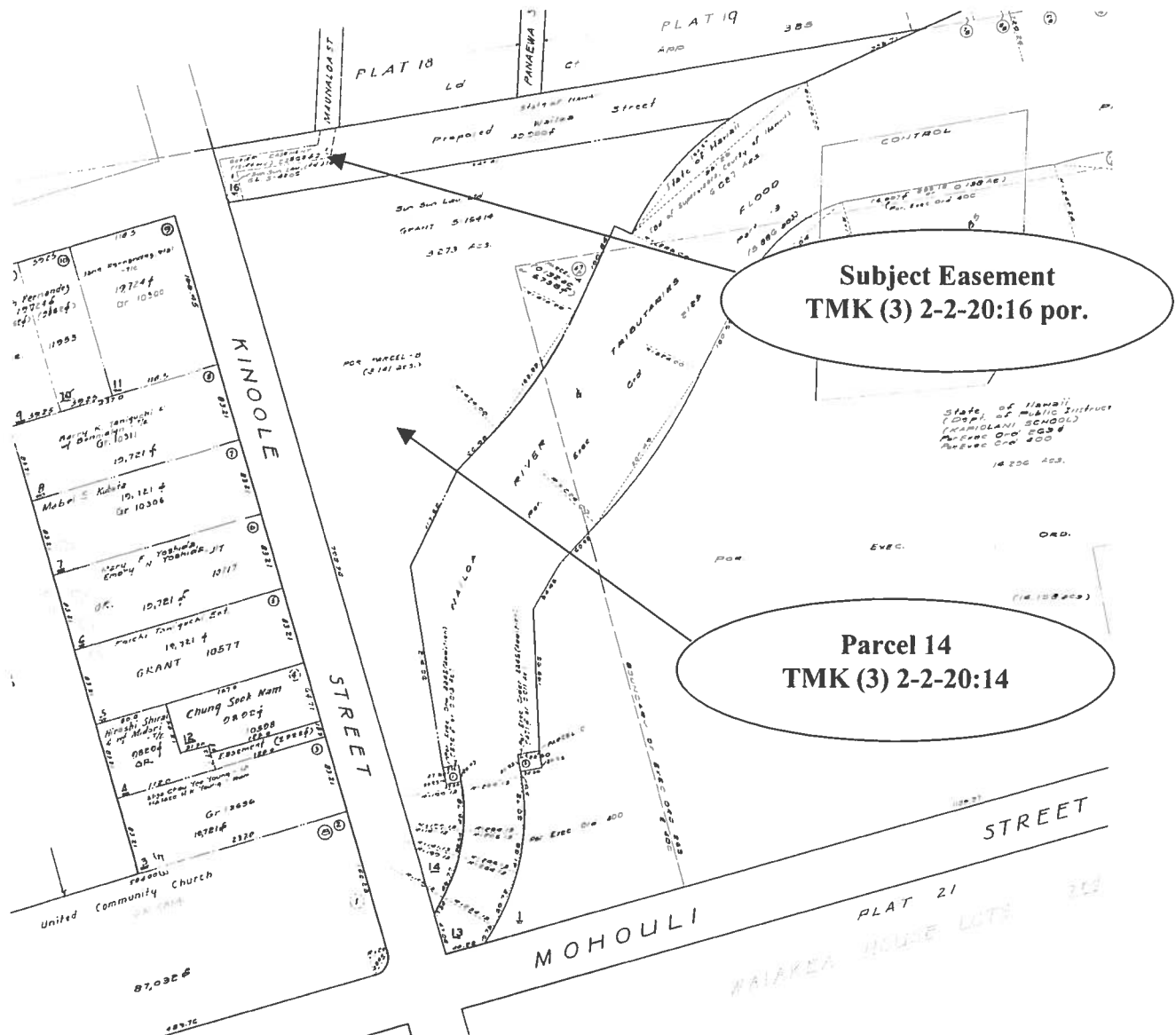


EXHIBIT A

**NAKAMOTO, OKAMOTO & YAMAMOTO
ATTORNEYS AT LAW, A LAW CORPORATION**

187 Kapiolani Street
Hilo, Hawaii 96720

ROY K. NAKAMOTO
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JEREL I. YAMAMOTO
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Telephone (808) 961-0641
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November 17, 2009

Mr. Kevin E. Moore
Hawaii District Land Agent
State of Hawaii
Department of Land and Natural Resources
Land Division
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Re: Sun Sun Lau, Ltd.
Grant of Easement No. S-4206

Dear Mr. Moore:

Earlier I had asked Raymond Hasegawa that his client submit the liability insurance that covers the easement property to protect the State but he informed me that the insurance has to be from Sun Sun Lau, Ltd. In your earlier letter you stated that if we cannot procure the insurance we can attempt to give you a convincing explanation. Our explanation is as follows:

Sun Sun Lau, Ltd. had been operating a restaurant for decades but after the closing of the restaurant Sun Sun Lau, Ltd. in 1997, it transferred the premises at 1055 Kinoole to Portercare Adventist Health System, a charitable association. At that point apparently to connect the easement which is necessary to serve the sewage from the premises had been overlooked. The Health System then sold the premises to Charles Ensey and Monica Mallick on June 15, 2005 and subsequently to their LLC on January 20, 2007. I understand that the LLC has now leased the premises to the State and the County or their agencies. Apparently all of the successor owners had overlooked the easement and the necessity to have it.

After transferring the premises to the Health System, Sun Sun Lau, Ltd. had no business activity, so it cancelled all insurance on the premises and the corporation. It seems that since Sun Sun Lau, Ltd. does not own the property at 1055 Kinoole so it would not have any insurable interest there so it cannot get insurance on the premises. The easement from the State is still in the name of Sun Sun Lau, Ltd. Theoretically

EXHIBIT B

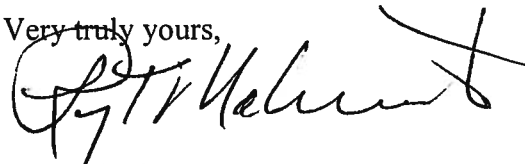
NAKAMOTO, OKAMOTO & YAMAMOTO
ATTORNEYS AT LAW, A LAW CORPORATION

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Sun Sun Lau, Ltd. can obtain liability insurance for the easement but we cannot use it because it is for the adjoining owner so it would seem that it does not have an insurable interest on the easement. Although Sun Sun Lau, Ltd. is delinquent in providing insurance to the State, there was no harm because although the sewer pipes are there, but they are underground, the proposed street in the easement is not developed and is overgrown with vegetation, the ground itself seems not usable unless it is developed, and the insurance coverage is already secured. Because of the above it would be academic to obtain insurance, if it can, and for only for a brief period. Thus, we ask that this explanation that insurance coverage by Sun Sun Lau, Ltd. be waived and that the Assignment of the Easement to 1055 Kinoole LLC., be allowed.

If you have any questions please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roy K. Nakamoto", written over the typed name.

Roy K. Nakamoto

RKN:jk

cc: Raymond Hasegawa
Sun Sun Lau, Ltd.